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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,945	07/23/2001	Dan Kikinis	P1544D1	8414

24739 7590 02/02/2004

CENTRAL COAST PATENT AGENCY  
PO BOX 187  
AROMAS, CA 95004

EXAMINER

CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 02/02/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/911,945	KIKINIS, DAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jason D Cardone	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____       |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input checked="" type="checkbox"/> Other: <i>See Attached Office Action.</i> |

### **DETAILED ACTION**

1. This action is responsive to the remarks of the applicant (Paper No. 9), filed on 11/12/03. Claims 8-10, 13 and 14 are presented for examination.
2. This application contains claims 1-7, 11 and 12 are drawn to an invention nonelected without traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 8-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yong et al. (hereinafter Yong), U.S. Patent No. 5,541,919, in view of Woundy, U.S. Patent No 6,031,841.
5. Regarding claim 8, Yong discloses a data transmission system comprising:

a high priority queue reserved for data entities requiring that data entities be sent in a successive fashion at or above a minimum; a lower priority data entity queue [Yong, col. 3, lines 27-47 and col. 4, line 40 – col. 5, line 6]; and

control routines adapted for dividing large data entities in the lower priority queue into multiple smaller data entities of a size that may be transmitted interspersed with data entities from the high priority queue [Yong, col. 3, lines 27-47, col. 4, line 40 – col. 5, line 6, and col. 9, line 43 – col. 10, line 15].

Yong does not specifically disclose a broadband transmission and transmitting without causing the rate of transmission of the to fall below the minimum rate. However, Woundy, in the same field of endeavor, discloses satellite broadband transmission of packets with Quality of Service (QOS) [Woundy, col. 1, lines 19-61] with a similar system as Yong. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have satellite transmissions and QOS, taught by Woundy, into the priority-based transmission system, taught by Yong, in order to be more global and regulating the transmission.

6. Regarding claim 9, Yong-Woundy further discloses the transmission system comprises a satellite transmission system [Yong, col. 1, lines 13-26] [Woundy, col. 1, lines 19-35].

7. Regarding claim 10, Yong-Woundy further discloses upon dividing a large data entity into multiple smaller data entities for transmission, the control routines prepare a division key for transmission to a user, the division key adapted to aid in reassembling the multiple data entities back into the undivided larger data entity [Yong, col. 5, lines 15-66 and col.9, lines 15-59] [Woundy, col. 1, lines 36-61].

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8. Regarding claims 13 and 14, they are method claims that correspond to the apparatus in claims 8-10, respectively. Therefore, the similar limitations are disclosed under Yong-Woundy for the same reasons set forth in the rejection of claims 8-10 [Supra 8-10].

### ***Response to Arguments***

9. Applicant's arguments filed 11/12/03 have been fully considered but they are not persuasive.

10. (A) Yong teaches away from control routines for dividing large data entities in the lower priority queue into multiple smaller data entities of a size that may be transmitted interspersed with data entities from the high priority queue.

As to point (A), Yong discloses a dynamic priority-based packet segmenting and multiplexing unit that divides large data entities in lower priority queues into multiple smaller data entities of a size that may be transmitted interspersed with data entities from a higher priority queue. The lower priority queue is transmitted, until a higher priority queue is ready to send packets. Then, the higher queue transmits the packets on the same output line [Yong, col. 4, lines 20-58, col. 5, lines 15-23 and col. 6, lines 15-48]. During patent examination and prosecution, claims must be given their broadest reasonable interpretation. *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993); *In re Prater*, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969). Giving the instant claims their broadest reasonable interpretation,

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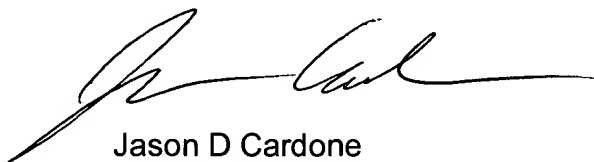
"interspersed" is broad enough to read on the transmitting of high priority and low priority packets with in an output transmission line as disclosed in Yong.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (703) 305-8484. The examiner can normally be reached on Mon.-Thu. (9AM-6PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Jason D Cardone  
Primary Examiner  
Art Unit 2142

January 28, 2004